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Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

- - - - - X  
:  
In re: : Chapter 11  
:  
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)  
et al., :  
:  
Debtors. : Jointly Administered  
- - - - - X

**STIPULATION, AGREEMENT AND ORDER BY AND AMONG THE DEBTORS,  
INTERNATIONAL BUSINESS MACHINES CORPORATION AND IBM CREDIT,  
LLC REGARDING REJECTION OF EQUIPMENT LEASES, PAYMENT OF  
MECHANICS' LIEN AND FOR RELATED RELIEF**

This stipulation and agreement (the "Stipulation") is made this 13th day of March, 2009 by and between the debtors and debtors in possession in the above-captioned cases (collectively, "Circuit City" or

the "Debtors")<sup>1</sup> and International Business Machines Corporation and IBM Credit LLC (together, "IBM"). The Debtors and IBM are collectively referred to herein as the "Parties".

WHEREAS, on November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions for chapter 11 relief with the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court").

WHEREAS, pursuant to sections 1107 and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), the Debtors are continuing to manage and operate their businesses as debtors in possession.

WHEREAS, on January 16, 2009, the Court authorized the Debtors, among other things, to conduct going-out-of-business sales (the "GOB Sales") at the Debt-

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland Drive, Richmond, Virginia 23233.

ors' remaining 567 stores pursuant to an agency agreement (the "Agency Agreement") between the Debtors and a joint venture, as agent (the "Agent"). On January 17, 2009, the Agent commenced GOB Sales pursuant to the Agency Agreement at the Debtors' remaining stores.

WHEREAS, Circuit City and IBM are parties to those certain Term Lease Master Agreements (the "Master Lease Agreements"), entered into on December 23, 2005 and April 27, 2007, as amended from time to time and those certain supplements to the Master Lease Agreements (each, a "Supplement"), pursuant to which IBM leases certain point-of-sale and other equipment (the "Equipment") to Circuit City. Copies of the Master Lease Agreements are attached hereto as Exhibits 1 and 2.

WHEREAS, pursuant to the Master Lease Agreements and certain of the Supplements, Circuit City leased Equipment from IBM is stored in a warehouse facility (the "Warehouse") in LeMars, Iowa (the "Iowa Equipment").

WHEREAS, the Warehouse is operated by Jacobson Companies ("Jacobson"). Jacobson has asserted a mechanics' lien (the "Mechanics' Lien") on the equipment,

which the Debtors are storing in the Warehouse, including the Iowa Equipment.

WHEREAS, Jacobson is refusing release any of the equipment in the Warehouse, including the Iowa Equipment, until the Mechanics' Lien is satisfied.

WHEREAS, due to the Debtors' wind-down of their businesses, the Debtors no longer have any need for the Iowa Equipment.

WHEREAS, IBM desires to retrieve the Iowa Equipment.

WHEREAS, the Debtors desire to reject the Supplements and/or equipment leases (other than any master leases) related to the Iowa Equipment (the "Iowa Equipment Leases"), including (but not limited to) those Supplements listed on Exhibit 3 attached hereto.

NOW, THEREFORE, intending to be legally bound hereby, upon order of the Bankruptcy Court as contemplated hereby (the "Order"), the Parties hereto stipulate as follows:

1. IBM shall pay to Jacobson an amount necessary to satisfy in full the Mechanics' Lien.

2. The Iowa Equipment Leases by which IBM leased the Iowa Equipment to Circuit City, including the

Supplements listed on Exhibit 3 attached hereto,<sup>2</sup> shall be deemed rejected as of March 13, 2009.<sup>3</sup>

3. IBM hereby waives and forever releases the Debtors and their estates from any and all claims (including claims relating to the Mechanics' Lien) for damages arising from the Debtors' rejection of the Iowa Equipment Leases, whether or not they are specifically listed on Exhibit 3,

4. Upon entry of the Order by the Bankruptcy Court, this Stipulation shall be binding upon and shall inure to the benefit of each of the Parties and each of their respective successors and assigns.

5. The Bankruptcy Court shall retain exclusive jurisdiction to hear and determine all matters relating to or arising from this Stipulation.

6. This Stipulation contains the entire agreement and understanding between the Parties with re-

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<sup>2</sup> Exhibit 3 sets forth the list of Iowa Equipment Leases associated with the Iowa Equipment based on the Debtors' latest information. However, the Debtors believe that certain Iowa Equipment Leases associated with the Subject Equipment may have been inadvertently omitted. To ensure that all Iowa Equipment Leases are rejected, the Debtors are seeking to reject all Iowa Equipment Leases for Iowa Equipment stored in or used at the Warehouse, whether or not such Iowa Equipment Leases are specifically listed on Exhibit 3.

<sup>3</sup> To the extent the Debtors have previously rejected any of the Iowa Equipment Leases, the prior rejection date shall control.

spect to the subject matter hereof, and supersedes and replaces all prior negotiations or proposed agreements, written or oral.

7. This Stipulation may be executed in counterparts, each of which shall be deemed to be an original, but all of which, together will constitute one and the same agreement. This Stipulation may be executed by facsimile signature which shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties have set their  
hands in agreement as of the date written above.

**CIRCUIT CITY STORES, INC.**

By:

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and IBM CREDIT, LLC**

By:

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Counsel to International Business Machines  
Corporation and IBM Credit, LLC



**ORDER**

Upon consideration of the foregoing, it is  
hereby:

ORDERED, that the Stipulation is hereby approved in its entirety; and it is further

ORDERED, that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Stipulation and Order.

Dated: Richmond, Virginia  
March \_\_, 2009

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UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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**CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I  
hereby certify that the foregoing proposed order has  
been endorsed by or served upon all necessary parties.

/s/ Douglas M. Foley  
Douglas M. Foley

**EXHIBIT 1**

**(December 23, 2005 Master Lease Agreement)**

**EXHIBIT 2**

**(April 27, 2007 Master Lease Agreement)**

**EXHIBIT 3**

**(Iowa Equipment Leases)**